IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5642 OF 1996

Maharashtra Rajya Prathamik Shikshak Samiti, an Association duly registered under the Societies Registration Act, being Registration No.MAH/448/64, Pune, through its President, Shri Ansari Afroz Ahmed, and having its office at 181, Chuna Bhatti, Malegaon, District Nashik 423 203. .. Petitioner

v/s.

1.The Administrative Officer,
Municipal School Board,
Malegaon Municipal Council,
Malegaon District Nashik.

2. The Malegaon Municipal Council,
Malegaon, District Nashik.

3. The Deputy Director of Education,
Nashik Region, Nashik.

4. The Education Officer,
(Primary Section), Zilla Parishad,
Nasik. .. Respondents.

Mr.N.D.Bhatkar for the petitioner.

Mr.Vinay Sonpal, Assistant Government Pleader for the respondnts.

CORAM : R.M. LODHA &
A.S.BAGGA, JJ.

DATED : 6TH JUNE, 2006.

ORAL JUDGMENT (Per R.M.Lodha, J.)

Maharashtra Rajya Prathamik Shikshak Samiti is the association of the primary teachers in the city of Malegaon (Nashik District). The association has 106 members. On behalf of

its members, the association has filed this writ petition praying therein that direction be given to the respondents to fill up the vacancies for the post of head master and giving the deemed dates of promotion to the members of the petitioner's association who have already been promoted as head masters and to pay the difference in their pay after giving them their deemed dates of promotion. The petitioner has also sought to challenge the directives issued by the respondent Nos.5 and 1 on 24.6.1996 and 7.6.1997.

2. It is the case of the petitioner that its members (list of which is annexed as Exhibit `A') were appointed as the assistant teachers in various Urdu medium schools run by Malegaon Municipal Council. The petitioner has averred that its members as per Exhibit `A' were eligible for promotion to the post of head master in the pay scale of Rs.1400-40-1600-50-2300-EB-60-2600 and those head masters who completed 12 years of service as on 10.10.1986 are entitled to pay scale of Rs.1640-60-2600-EB-74-2900. However, they have not been given promotion even though there were clear vacancies and those who have been given promotion were not given deemed dates of their promotion. According to the petitioner, this is in violation of Rule 32 of the Maharashtra Civil Service (General Conditions of Services) Rules, 1981. The directives given by the respondent Nos.5 and 1 on 24.6.1996 and 7.6.1997 respectively are being challenged on the ground of being in violation of Maharashtra Civil Services (Pay) rules, particularly, Rule 11(1)(A) thereof.

3. The affidavit in reply has been filed by the respondents in opposition to the writ petition. According to the reply affidavit, the pay scale of the members of the petitioner's association was initially Rs.290-10-390-15-465-EB-15-540 and after coming into force Chattopadhyay Commission with effect from 1.1.1986, their pay scale is Rs.1200-2040. Those assistant teachers who have completed 12 years of service as on 1.1.1986, their pay scale with effect from 1.1.1986 is Rs.1400-2600. As regards the promotion of assistant teachers to the various posts of head masters, it is the case of the respondents that the promotion is given on the basis of the seniority-cum-merit and for that purpose, the Staff Selection Committee is appointed under the provisions of Primary Education Act, 1947. The committee scrutinises each and every case and then passes the resolution of promotion to the post of head master. The assistant teacher once promoted on the recommendation of the Staff Selection Committee is entitled to pay scale of head master only and cannot claim the pay scale of head master from the date of accrual of the vacancy of the post.

4. That the assistant teachers who have been promoted to the various posts of head master have been given the pay scale of head master as per the rules is not in dispute. We do not find any merit in the contention of the petitioner that once the post of head master has fallen vacant, the assistant teacher who is eligible to the promotion is entitled to the pay scale of head master from the date of the vacancy in the post. A person is entitled to the pay

scale of a particular post from the date he assumes the charge of such post. The vacancy in the post cannot be the basis for claiming the pay scale of that post when the person was not holding the post. Even if we assume that the assistant teachers who have put in continuous service of five years as teachers and who are trained are eligible for promotion to the post of head master on the basis of the eligibility, such assistant teachers would not be entitled to the pay scale of head master until they have been promoted in accordance with the relevant rules. The learned counsel for the petitioner could not demonstrate that the assistant teachers represented by the petitioner's association were governed by Maharashtra Civil Services (General Conditions of Service) Rules or Maharashtra Civil Services (Pay) Rules. When the selection to a particular post is based on seniority-cum-merit as is the rule for the post of head master, until the person is selected and promoted as head master, how can such person be entitled to pay scale of head master.

5. In view of the aforesaid legal position, the grievance raised by the petitioner has no merit. The writ petition is liable to be dismissed and is dismissed with no order as to costs.

(R.M.LODHA, J.)

(A.S.BAGGA, J.)